**Opinion of the Supreme Court for *McCulloch v. Maryland* (1819)**

*In response to the establishment of a branch of the Bank of the United States (a federal institution) in Maryland, the state legislature passed a law assessing an annual tax of $15,000 on the bank, considering it a "foreign bank."*

*In 1803 the Supreme Court struck down the tax, stating that Maryland had exceeded its authority in relation to federal institutions as described in the Constitution. In addition to affirming the dominance of the federal government over the states,* McCulloch v. Maryland *strengthened the ability of Congress to utilize the "necessary and proper clause," which allocates to Congress powers not expressly stated in the Constitution.*

That the power of taxation is one of vital importance; that it is retained by the states; that it is not abridged by the grant of a similar power to the government of the Union; that it is to be concurrently exercised by the two governments-are truths which have never been denied. But such is the paramount character of the Constitution that its capacity to withdraw any subject from the action of even this power is admitted. The states are expressly forbidden to lay any duties on imports or exports, except what may be absolutely necessary for executing their inspection laws. . . . The same paramount character would seem to restrain . . . a state from such other exercise of this power as is in its nature incompatible with, and repugnant to, the constitutional laws of the Union. A law absolutely repugnant to another, as entirely repeals that other as if express terms of repeal were used.

On this ground the counsel for the Bank place its claim to be exempted from the power of a state to tax its operations. There is no express provision for the case, but the claim has been sustained on a principle which so entirely pervades the Constitution, is so intermixed with the materials which compose it, so interwoven with its web, so blended with its texture, as to be incapable of being separated from it without rending it into shreds.

This great principle is that the Constitution, and laws made in pursuance thereof, are supreme; that they control the constitutions and laws of the respective states, and cannot be controlled by them. From this, which may be almost termed an axiom, other propositions are deduced as corollaries. . . . These are: 1. That a power to create implies a power to preserve. 2. That a power to destroy, if wielded by a different hand, is hostile to, and incompatible with, these powers to create an preserve. 3. That where this repugnancy exists, that authority which is supreme must control, not yield to that over which it is supreme. . . .

That the power to tax involves the power to destroy; that the power to destroy may defeat and render useless the power to create; that there is a plain repugnance in conferring on one government a power to control the constitutional measures of another . . . are propositions not to be denied. . . .

If we apply the principle for which the state of Maryland contends, to the Constitution generally, we shall find it capable of changing totally the character of that instrument. We shall find it capable of arresting all the measures of the government, and of prostrating it at the foot of the states. The American people have declared their Constitution, and the laws made in pursuance thereof, to be supreme; and this principle would transfer the supremacy, in fact, to the states.

If the states may tax one instrument employed by the government in the execution of its powers, they may tax any and every other instrument. They may tax the mail; they may tax the mint; they may tax patent rights; they may tax the papers of the custom-house; they may tax judicial process; they may tax all the means employed by the government, to an excess which would defeat all the ends of government. This was not intended by the American people. They did not design to make their government dependent on the states. . . .

The question is, in truth, a question of supremacy. And if the right of the states to tax the means employed by the general government be conceded, the declaration that the Constitution, and the laws made in pursuance thereof, shall be the supreme law of the land, is empty and unmeaning declamation.

**For more information:**

**McCulloch v. Maryland**

[http://www.usinfo.state.gov/usa/infousa/facts/democrac/10.htm]

This site has the complete text of the decision.